THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No. 8982 OF 2000

20-12-2005

Between:

Md. Yousuf.

……Petitioner

And

Sports Authority of Andhra Pradesh, rep. by its Vice Chairman & Managing Director and another.

……..Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No. 8982 OF 2000

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

Heard learned Counsel for the parties and went through the record.

The petitioner has challenged the order passed on 17.5.2000 by the respondents, relieving him on superannuation as Plumber. The impugned order had been passed on the strength of G.O.Ms.No.76, dated 17.04.2000. The case of the petitioner is that he was entitled to continue in service up to the age of 60 years in terms of Rule 25(1)(A) of the A.P. Sports Authority Rules, 1993 (for short 'the Rules'). Rule 25 of the Rules lays down that an employee shall retire on the Afternoon of the last day of the Month in which he/she attains the age of 60 years, in the case of pre 01.11.1987 entrants of office and it shall be at 58 years of age for post 01.11.1987 entrants. The petitioner had, admittedly, joined the Department before 01.11.1987, therefore, he was entitled to continue in service till he attained the age of 60 years, but surprisingly, he was retired by the impugned order, when he was entitled to serve the Department for more than 18 months. This order is purportedly passed under G.O.Ms.No.76, dated 17.4.2000. This G.O. was subject matter of a writ petition in this Court, being Writ Petition No.493 of 2004. The Court found that this G.O. had not been published and as such, the G.O. had no force of law. The Court found–

> *"The essential and fundamental premises of the petitioner respecting the validity of the amendment brought about in G.O.171 is thus misconceived. If that be so, as it is, the age of superannuation of the petitioner is 58 years as per the amended Rule 25(1)(a) of 1993 Rules. The amended rule operates proprio vigore with effect from 13-12-2003, the date of publication of G.O.171. As the impugned consequential order of the employer – SAAP had been issued on 31-12-2003 after Rule 25(1)(a) of 1993 Rules has properly come into effect, the impugned order dated 31-12-2003 suffers no infirmity warranting interdiction by this Court."*

Since the G.O. had already been held illegal on the basis on which

the impugned order in this writ petition is passed, we do not think that the respondents can, in any way, defend the case. However, the respondents contended that a fresh G.O. was passed in the year 2003, being G.O.Ms.No.171, dated 12.12.2003 and it was given retrospective effect from 17.4.2000. We have our own doubts whether such a G.O. could have been given a retrospective effect or not, but in the present case, this G.O., at no point of time, was applied to the petitioner. The learned Single Judge had already held that G.O.Ms.No.171 would be prospective in its effect, but in the present case, the order impugned has not been passed even under this G.O. This order is being passed under G.O.Ms.No.76, therefore, in our view, the order impugned is bad and it is accordingly set aside, by allowing this writ petition.

Since the petitioner would have retired by now had he been allowed to serve till he attained the age of 60 years, therefore, he cannot be put back into service. The respondents are directed to take his date of retirement as 31st of December, 2001. For all practical purposes, he shall be treated to have been superannuated on 31st of December, 2001 and he shall be paid his salary from 1st of June, 2000 to 31st of December, 2001 minus the pension, if any, already paid. For all pensionary benefits, it shall be noted that the petitioner had retired on 31st of December, 2001. For arrears, he shall be paid interest at the rate of 12 per cent per annum. Arrears shall be paid within a period of two months from the date of receipt of a copy of this order.

Writ petition is accordingly allowed. No order as to costs.

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(BILAL NAZKI, J)

20th December 2005

(S.ANANDA REDDY, J)

N.B:-

Copy shall be issued within three (3) days from the date of making an application for it.

(B/o)

ajr